

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CARLOS R.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2010031276

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 11, 2011, in Los Angeles.

Carlos R.¹ (claimant) was not present; he was represented by his mother, Zulma Pamela Dominguez. Claimant's mother utilized the services of an interpreter, Silene Conceição.

Johanna Arias-Bhatia, Fair Hearing Manager, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 11, 2011.

¹ Initials and family titles are used to protect the privacy of claimant and her family.

ISSUE

Whether the Service Agency may terminate funding for claimant's Metropolitan Transit Authority (MTA) bus pass.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-6; claimant's exhibit A.

Testimony: Patricia Zelaya-Munoz, SCLARC service coordinator; Saul Lopez, SCLARC program manager; Zulma Pamela Dominguez, claimant's mother.

FACTUAL FINDINGS

1. Claimant is a 13-year-old boy, born on August 25, 1997, who is a consumer of SCLARC based on his qualifying diagnoses of cerebral palsy, severe mental retardation, and grand mal seizures; he also has hypothyroidism and diabetes. He is non-ambulatory and has no speech; he takes several medications and sees various medical specialists who monitor his health. He lives at home with his mother and uncle. Claimant receives various services and supports, including transportation to and from school, from the Los Angeles Unified School District.

2. Claimant has received Service Agency funding for a Metropolitan Transportation Authority (MTA) monthly bus pass for approximately one year. The bus pass is for claimant and his mother, who uses the pass to take claimant to all of his medical and dental appointments.

3. Patricia Zelaya-Munoz, claimant's service coordinator, informed claimant's mother in early February 2010 that, due to a change in the law, the Service Agency would no longer fund the MTA monthly bus pass and that a notice of proposed action (NOPA) would be sent to her.

4. By a NOPA letter dated February 17, 2010, the Service Agency informed claimant of its decision to terminate funding for the MTA monthly bus pass. The Service Agency wrote that "[y]ou are not eligible for continuation of the requested services(s) because: Generic resources are available to you to help you obtain a monthly MTA Bus Pass at reduced cost." The letter provided a great deal of detailed information about how to obtain MTA Subsidy Passes, MTA/Metro bus stickers, and services from the South Gate Phone-A-Ride program. The letter cited in support of the Service Agency's decision various sections of the Lanterman Developmental Disabilities Services Act (Lanterman Act) pertaining to the

use of generic services and resources, including Welfare and Institutions Code sections 4644, 4646, 4646.4, 4647, and 4648.²

5. On February 24, 2010, claimant's mother submitted to SCLARC a Fair Hearing Request on claimant's behalf, appealing the termination of funding for claimant's MTA monthly bus pass.

6. Ms. Munoz testified at hearing that, to obtain the MTA pass for passengers with disabilities, claimant's mother must complete a Disabled TAP Identification Card Application, which will require a photograph of claimant. (Ex. 5.) She also testified that the City of Los Angeles CityRide program for disabled children and adults involves the purchase of fare scrip at a discounted rate; the scrip may be used to purchase fares for various means of transportation, including taxis, vans, bus passes, and TAP, and may be used by both claimant and his mother. (Ex. 6.)

7. Claimant's mother introduced documentary and testimonial evidence of claimant's frequent medical appointments. (See Ex. A.) Saul Lopez, SCLARC program manager and Ms. Zelaya-Munoz's supervisor, testified that the documentation appears to support claimant's qualification for funding for the TAP program. If claimant provides the Service Agency some additional documentation and is found to qualify, claimant's mother would obtain the TAP pass and submit her pass identification number to the Service Agency; the Service Agency would then pay the MTA. Mr. Lopez also testified that claimant could also qualify for a program that would pick him and his mother up at home and take them to and from all medical appointments.

8. Claimant's mother testified that her son requires her constant care, that he has and will continue all his life to have frequent medical appointments, and that she must accompany him to all such appointments. She testified that she has used a van service in the past but that the MTA is much more suited to claimant's needs. Vans are sometimes late, making claimant late for his appointments; also, claimant cannot wait a long time to be picked up because he is on medications that have a diuretic effect. She has not yet applied for a TAP pass. Depending on the outcome of this matter, she intends to evaluate claimant's transportation options.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service

² All further statutory references are to the California Welfare and Institutions Code, unless otherwise stated.

Agency's decision to terminate funding for claimant's MTA bus pass. Jurisdiction in this case was thus established. (Factual Findings 1-5.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proving, by a preponderance of the evidence, that it is entitled to terminate funding for claimant's MTA monthly bus pass. (Evid. Code, § 115.)

3. The Lanterman Act is a comprehensive statutory scheme to provide "[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community." (§ 4501.) The services and supports should "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*)

4. The services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).) The planning process shall include the development of a transportation access plan, which

shall identify the services and supports necessary to assist the consumer in accessing public transportation and shall comply with Section 4648.35. . . . Regional centers are encouraged to coordinate with local public transportation agencies.

(§ 4646.5, subd. (a)(6)(B).) Section 4648.35 provides, in pertinent part, that

[¶] . . . [¶]

(b) A regional center shall fund the least expensive transportation modality that meets the consumer's needs, as set forth in the consumer's IPP or IFSP.

[¶] . . . [¶]

(d) A regional center shall fund transportation services for a minor child living in the family residence, only if the family of the child provides sufficient written documentation to the regional center to demonstrate that it is unable to provide transportation for the child.

5. The internal planning process must ensure the “[u]tilization of generic services and supports when appropriate.” (§ 4646.4, subd. (a)(2); see also § 4659, subds. (a)(1), (d).)

6. The Service Agency established by a preponderance of the evidence that it may terminate funding for claimant’s MTA monthly bus pass. Generic resources such as MTA reduced-fare TAP passes for claimant and his mother are available; moreover, based on claimant’s significant transportation needs, the Service Agency believes claimant would likely qualify for Service Agency funding for those reduced-fare passes. (Factual Findings 3-8.)

ORDER

Claimant’s appeal is denied. SCLARC is not required to fund claimant’s MTA monthly bus pass.

DATED: August 16, 2011

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.